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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,412	04/10/2006	Philip Steven Newton	FR 030123	3707

24737 7590 04/25/2011

PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

EXAMINER	
GIARDINO JR, MARK A	
ART UNIT	PAPER NUMBER
2185	

NOTIFICATION DATE	DELIVERY MODE
04/25/2011	ELECTRONIC

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debbie.henn@philips.com
marianne.fox@philips.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PHILIP STEVEN NEWTON,
DECLAN PATRICK KELLY, FLOKERT GAAYO MIEDEMA,
KOEN JOHANNA GUILLAUME HOLTMAN, WIEBE DE HAAN,
WILLEM BULTHUIS, and WILLEM PETER VAN DER BRUG

Appeal 2009-010083
Application 10/575,412
Technology Center 2100

Before JOSEPH L. DIXON, JOHN A. JEFFERY, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b). We affirm-in-part.

STATEMENT OF THE CASE

Appellants' invention relates to sharing local storage among applications on removable carriers and preventing corruption of the stored data by preventing access to unauthorized portions of the local storage. *See generally* Spec. ¶¶ 008, 010. Claim 1 is reproduced below with the key disputed limitations emphasized:

> 1. A device comprising:
> a local storage arrangement for storing a plurality of data items;
> a receptacle for receiving a removable storage carrier storing a software application;
> *a storage management unit for* allocating a portion of the local storage arrangement to the removable storage carrier and *referencing the portion with identification information respecting respective access rights to a data item stored in the portion granted to the software application stored on the removable data carrier.*

The Examiner relies on the following as evidence of unpatentability:

Comerford	US 4,577,289	Mar. 18, 1986
Chang	US 5,724,425	Mar. 3, 1998
Atkinson	US 5,881,228	Mar. 9, 1999
Barnett	US 6,292,874 B1	Sept. 18, 2001
Bonola	US 2001/0011338 A1	Aug. 2, 2001
Lee	US 6,414,920 B1	July 2, 2002
Sprigg	US 2003/0061504 A1	Mar. 27, 2003
Lawrence	US 6,629,113 B1	Sept. 30, 2003
Ayat	US 6,904,232 B1	June 7, 2005 (filed Apr. 4, 2000)

THE REJECTIONS

1. The Examiner rejected claims 1-3, 7, and 11-15 under 35 U.S.C. § 102(b) as anticipated by Sprigg. Ans. 3-6.[1]

2. The Examiner rejected claims 4, 6, and 20 under 35 U.S.C. § 103(a) as unpatentable over Sprigg, Ayat, and Lee. Ans. 6-8.

3. The Examiner rejected claim 5 under 35 U.S.C. § 103(a) as unpatentable over Sprigg, Ayat, Lee, and Comerford. Ans. 8.

4. The Examiner rejected claim 8 under 35 U.S.C. § 103(a) as unpatentable over Sprigg and Chang. Ans. 8-9.

5. The Examiner rejected claims 9 and 10 under 35 U.S.C. § 103(a) as unpatentable over Sprigg and Barnett. Ans. 9-10.

6. The Examiner rejected claim 16 under 35 U.S.C. § 103(a) as unpatentable over Sprigg and Atkinson. Ans. 10.

7. The Examiner rejected claim 17 under 35 U.S.C. § 103(a) as unpatentable over Sprigg and Bonola. Ans. 10-11.

8. The Examiner rejected claims 18 and 19 under 35 U.S.C. § 103(a) as unpatentable over Sprigg and Lawrence. Ans. 11-12.

THE ANTICIPATION REJECTION

Claims 1-3, 7, and 11-14

Regarding representative independent claim 1, the Examiner finds that Sprigg discloses all recited limitations, including mapping Sprigg's disclosed unique identifier and granting an application access to a file to the recited "storage management unit" for referencing a local storage

[1] Throughout this opinion, we refer to (1) the Appeal Brief filed October 21, 2008 and (2) the Examiner's Answer mailed December 11, 2008.

arrangement's portion with an identification information respecting access rights to a data item. Ans. 3-4. The Examiner also takes the position that the application on Sprigg's removable storage carrier and computer device are the same application. *See* Ans. 12-14. Thus, in the Examiner's view, access rights granted to an application stored on the computer are also granted to the application stored on the removable carrier. *See id.*

Appellants argue that Sprigg does not provide access rights to a data item stored in local storage but rather provides access rights to an application stored in local storage. *See* Br. 12. Appellants also assert that the software application in Sprigg is located on the computer's local storage area (i.e., 110), and thus cannot be the software application stored on the removable data carrier as recited in claim 1. *See* Br. 12-14.

The issue before us, then, is as follows:

ISSUE

Under § 102, has the Examiner erred in rejecting claim 1 by finding that Sprigg discloses a storage management unit for referencing a portion of a local storage arrangement with identification information respecting access rights to a data item stored in the portion and granted to the software application stored on the removable data carrier?

FINDINGS OF FACT (FF)

1. Appellants do not define a software application. *See generally* Specification.

2. Sprigg's computer device 105 has a local storage area 110.[2] The computer device 105 may receive applications (e.g., 135) and other data from I/O device 125 (e.g., CD-ROM, smart card, or floppy disk). Storage area 110 stores the data, applications (e.g., object code, scripts, java file, a bookmark file (or PQA files), WML script, byte code, perl script), and other information (e.g., operating system files, resource files, configuration files, and libraries). Sprigg, ¶¶ 0013, 0026, 0028; Fig. 1.

3. Sprigg's application may receive a request to access a storage area (step 520), such as a request to perform a read or write operation on a file located in the storage area that may control resources of the computer device. The computer determines if the application is granted privileges to the location of the file (step 515). If the application has privileges to a file's location, then the application is granted access (step 520). Otherwise, access is denied (step 525). Sprigg, ¶ 0053-55; Fig. 5.

4. Sprigg discloses a system that limits an application's access to storage on a per-application basis. An application's access to a portion of storage outside the granted portion is denied. This is achieved by receiving the application's unique identifier and mapping the application directory to a root directory. This mapping can be used to create privileges given to an application. Sprigg, Abstract; ¶¶ 0045-48; 0053-54; Fig. 4.

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[2] Sprigg's Figure 1 labels the storage area using reference numeral "119." *See* Sprigg, Fig. 1. However, Sprigg describes the storage area using reference numeral 110. *See* Sprigg, ¶ 0026. We find that using reference numeral "119" in Figure 1 is a typographical error and will presume that the label in Figure 1 should have been "110."

ANALYSIS

We begin by construing the key disputed limitation of claim 1 which calls for, in pertinent part, "the software application" stored on the removable data carrier. As Appellants have not defined the phrase, "software application" (FF 1), we give this phrase its broadest reasonable construction. *See In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (internal citations omitted). An "application" is a program designed to assist in performing a task.[3] Thus, we find the claimed software application in claim 1 includes the program or code stored on the removable data carrier.

Sprigg's computer device (e.g., 105) has a local storage area or arrangement (e.g., 110) that receives and stores applications (e.g., 135) via an I/O device (e.g., 125), such as a CD-ROM or smart card. *See* FF 2. At least in the case of the CD-ROM, Sprigg discloses that the application is copied from a removable data carrier (e.g., 125) to the local storage arrangement (e.g., 110). *See id.* Granted, this application stored on the local storage is a copy or another version of the software. But the code on the computer's local storage (e.g., 110) is the same code stored on the removable data carrier (e.g., CD-ROM or smart card). We therefore agree with the Examiner (Ans. 12-13) that the software application or code stored on the local storage arrangement (e.g., 110) is the "same application" (i.e., code) stored on the removable data carrier, at least to the extent that the respective applications' versions are the same. As such, we are unpersuaded that Sprigg's application (i.e., code) located on the computer's local storage

[3] *Microsoft® Computer Dictionary* 31 (5th ed. 2002).

area 110 cannot be the same "software application" version stored on the removable data carrier (*see* Br. 12-14) as recited in claim 1.

Additionally, claim 1 recites that the storage management unit is "for referencing the portion with identification information respecting respective access rights to a data item stored in the portion granted to the software application stored on the removable data carrier." Given its broadest reasonable construction, this limitation in claim 1 is functional and therefore covers any and all embodiments which can perform the recited function. *See In re Swinehart*, 439 F.2d 210, 213 (CCPA 1971). That is, claim 1 does not actively recite granting the software application stored on the removable data carrier access rights to the data item, but rather claims a storage management unit *for referencing the portion of the local storage area that is allocated to the carrier with identifying information*, and that the information respects access rights to data items granted to the application stored on the removable data carrier. Sprigg's storage management unit references identifying information (e.g., the unique identifier) respecting access rights to a data item. *See* FF 3-4. Moreover, as explained above and in the Examiner's Answer (Ans. 12-14), Sprigg's identifying information is capable of granting access rights to the software application stored on the removable carrier because the code (e.g., the application) for the applications on both the local storage device and the removable data carrier are the same. *See* FF 2-4.

Appellants also contend that Sprigg does not provide access rights to data items, but rather the application itself, stored in the local storage arrangement's portion as required by claim 1. *See* Br. 12. We disagree. Sprigg discloses that the application has privileges to different data stored in

the storage area 110 using an identifier. *See* FF 3-4. As the Examiner points out, Sprigg discloses the application is granted access to files (e.g., a data item). Ans. 13. Also, these files can control resources of the computer device within a given location of the local storage arrangement (e.g., storage area 110) or files other than the application files. *See* FF 3. Furthermore, the files and "other data" (*see* FF 2) are distinct from the application stored within the local storage arrangement. *See* FF 2-3. Appellants also acknowledge this distinction by admitting a portion of local storage area is allocated not only the application, but also to "data related to the application" (*see* Br. 13). Thus, Sprigg discloses access rights granted to data items (e.g., other data and files) stored in local storage and granted to the application as recited in claim 1.

Lastly, while presenting no specific arguments, Appellants assert that they reserve the right to argue claims 2, 3, 7, and 11-14 at a later date. *See* Br. 11. Either these claims are intended to be appealed and are grouped with representative independent claim 1 (*see* 37 C.F.R. § 41.37(c)(1)(vii)), or these claims are considered withdrawn from appeal and should be cancelled (*see Ex parte Ghuman*, 88 USPQ2d 1478, 1480 (BPAI 2008) (precedential)). Because these claims are clearly stated as being subject to appeal *(see* Br. 4) and listed in the grounds of rejection to be reviewed (*see* Br. 9), we accordingly group these claims with representative claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii).

For the foregoing reasons, Appellants have not persuaded us of error in the anticipation rejection of independent claim 1, and claims 2, 3, 7, and 11-14 not separately argued with particularity (Br. 11-16).

Claim 15

Claim 15 recites granting the rights to the software application stored or located on the removable data carrier with respect to data item stored in the portion. The Examiner relies on a similar analysis of Sprigg regarding claim 1 to reject claim 15. *See* Ans. 3-6, 12-14. Appellants do not separately argue claim 15. *See* Br. 11-16.

The issue before us, then, is as follows:

ISSUE

Under § 102, has the Examiner erred in rejecting claim 15 by finding that Sprigg grants access rights to the software application stored on the removable data carrier with respect to data item stored in a portion of a local storage arrangement?

ANALYSIS

Based on the record before us, we find error in the Examiner's rejection of claim 15. Unlike claim 1, claim 15 requires affirmatively granting access rights to a software application stored on the removable data carrier with respect to data item stored in a portion of a local storage arrangement. While Sprigg references a portion with information respecting access rights to a data item, and is capable of granting these rights to an application stored on the removable data carrier, Sprigg does not actually grant access rights to the software application version stored on the removable data carrier. *See* FF 1-4. Rather, we agree with Appellants that Sprigg affirmatively grants access rights only to the application version

stored on the local storage arrangement (e.g., 110)—an instantiation distinct from the version stored on the carrier. *See id.*

For the foregoing reasons, Appellants have persuaded us of error in the anticipation rejection of independent claim 15.

THE OBVIOUSNESS REJECTIONS

Regarding the obviousness rejections, Appellants refer to the discussions pertaining to claim 1. *See* Br. 16-24. Appellants also contend that the additionally-cited references (i.e., Ayat, Lee, Comerford, Chang, Barnett, Atkinson, Bonola, and Lawrence) do not cure the alleged deficiencies in Sprigg. *See id.* We are not persuaded by Appellants' arguments, however, for the reasons noted above in connection with claim 1. Accordingly, we sustain the obviousness rejections of claims 4-6, 8-10, and 16-20.

CONCLUSION

The Examiner did not err in rejecting (1) claims 1-3, 7, and 11-14 under § 102, and (2) claims 4-6, 8-10, and 16-20 under § 103. The Examiner, however, erred in rejecting claim 15 under § 102.

ORDER

The Examiner's decision rejecting claims 1-20 is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

pgc